

Office of Unfair Import Investigations



UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

October 16, 2017

Dr. Lakshmi Arunachalam
222 Stanford Ave.
Menlo Park, CA 94025
Tel: 650-690-0995

Re: Complaint of Dr. Lakshmi Arunachalam Concerning *Certain IoT Devices and Components Thereof (IoT, the Internet of Things – Web Applications Displayed on a Web Browser*, (Dkt. No. 337-TA-3263)

Dear Dr. Arunachalam:

I am writing on behalf of the Office of Unfair Import Investigations (“OUII”) with respect to the Complaint that was filed with the Commission with an official date of receipt of October 3, 2017. OUII reviews all complaints filed with the Commission for their compliance with the statutory and regulatory requirements. *See* 19 U.S.C. § 1337; 19 C.F.R. Part 210. During the pre-institution period of a complaint, which is often 30 days from the date a complaint is received, but which can be extended beyond 30 days (*see* 19 C.F.R. § 210.10), OUII often asks parties that have filed a complaint for additional information and supplementation. We are also available to answer questions about the pre-institution process and regulatory requirements that apply to complaints that have been filed.

Based upon our review thus far, we have identified at least the following areas, which are discussed below, where the Complaint does not appear to comply with the Commission’s rules:

- (1) The Commission rules require that a complaint describe “specific instances of alleged unfair importations.” 19 C.F.R. § 210.12(a)(3). For 29 of the 30 proposed respondents, the Complaint does not identify any specific instances of alleged unfair importations. By way of example only, the Complaint does not identify any specific instance of a product

imported, sold for importation or sold after importation into the United States by Hertz Global Holdings, Inc. Please provide the required information.

With respect to proposed respondent Apple, Inc., the specific instance of importation identified in the Complaint is the purchase of an iPhone 7 by the complainant in Inv. No. 337-TA-1065. To the extent you have additional evidence of specific instances of importation, please provide it.

- (2) The Commission rules require that a complaint include “a reference to the specific claims in each patent that allegedly cover the article imported or sold by each named [respondent].” 19 C.F.R. § 210.12(a)(9)(vii). For 29 of the 30 proposed respondents the Complaint does not identify an article that is imported or sold by each proposed respondent, and thus also does not identify the particular patent claims that allegedly cover such an article. Please provide the required information.
- (3) The Commission rules state in part that a complaint should include “[a] showing that each [respondent] is importing or selling the article covered by . . . the above specific claims of each involved U.S. patent. When practicable a complainant shall [include] a chart that applies each asserted independent claim of each involved U.S. patent to a representative involved article of each named [respondent].” 19 C.F.R. § 210.12(a)(9)(viii). For 29 of the 30 proposed respondents identified, the Complaint and the single claim chart do not include the required showing. Please provide additional information identifying products imported into the United States by each proposed respondent that allegedly infringe the asserted independent claims of the ‘340 patent.

With respect to proposed respondent Apple, Inc., the article that is compared to the asserted independent claims of the ‘340 patent is not the same article on which the Complaint relies for evidence of a specific instance of importation (the iPhone 7 purchased by the complainant in Inv. No. 337-TA-1065). Please provide additional information showing that the allegedly imported product allegedly infringes the asserted independent claims of the ‘340 patent.

- (4) The Commission rules require that a complaint include “[a] showing that an industry in the United States, relating to the patent exists. When practicable [include] a chart that applies an exemplary claim of each involved U.S. patent to a representative involved domestic article.” 19 C.F.R. § 210.12(a)(9)(ix). The Complaint does not identify a representative involved domestic article with any particularity. The Complaint also does not compare any representative involved domestic article to any claim of the ‘340 patent. Please identify the particular domestic articles, and please provide the requisite identifying the particular domestic industry articles, and please also show that they practice at least one claim of the ‘340 patent by including, in particular, a claim chart.

With respect to the economic prong of the domestic industry requirement, the Commission rules state that relevant information in a complaint includes, but is not limited to, significant investments in plant and equipment, or labor and capital; or substantial investment in the exploitation of the subject patent including engineering,

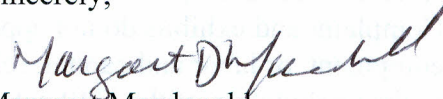
research and development or licensing. 19 C.F.R. §§ 210.12(a)(6)(i)(A) – (C). The Complaint and exhibits do not appear to quantify the investments made in plant and equipment, or labor and capital, related to the domestic industry articles, or investments in the exploitation of the ‘340 patent. Please provide additional details concerning the investments made in plant and equipment, and/or labor and capital, or investments in the exploitation of the ‘340 patent.

- (5) The Commission rules require “[t]he identification of the ownership of each involved patent and a certified copy of each assignment (a legible copy will suffice for each required copy of the Complaint).” 19 C.F.R. § 210.12(a)(9)(ii). While you have attached a printout from the U.S. Patent and Trademark Office website, and while we understand you have ordered copies of the assignment records for the ‘340 patent, we do not yet have the assignments themselves. Please provide copies of the assignments, and certified copies of the assignments as soon as they are available.
- (6) The Commission rules require that a complaint provide public versions of confidential exhibits. 19 C.F.R. § 210.4(f)(7)(i). There do not appear to be public versions of Confidential Exhibits 1C, 2C, 3C, 4C or 5C. Please provide public versions of all confidential exhibits.
- (7) With respect to any allegations in the Complaint of “unfair methods of competition and unfair acts in the importation of articles (other than articles provided for in subparagraphs (B), (C), (D), and (E)) . . . ” under 19 U.S.C. § 1337(a)(1)(A), the Complaint (including the exhibits and appendices) does not comply with the applicable statutory requirements or Commission rules. *See, e.g.*, 19 C.F.R. §§ 210.12(a)(6)(iii), (8).

During the pre-institution period you have the opportunity to supplement the Complaint (and exhibits) with additional information in order to comply with the Commission rules. You can also file an amended complaint to address any deficiencies. Please correct the above-identified deficiencies by the close of business October 23, 2017. If you are unable to meet this deadline, please submit a letter to the Secretary of the Commission (Lisa Barton) stating the date by which these deficiencies will be corrected and request postponement of the decision on whether to institute an investigation. We recommend that any request for postponement extend to a date that is two weeks after the date on which you expect these deficiencies to be corrected (*e.g.*, if you expect to be able to file any additional information by October 31, 2017 correcting deficiencies, your request for postponement of the Commission vote on whether to institute would be November 14, 2017).

Please be advised that the Commission’s determination to institute an investigation based on the allegations in the Complaint may be impacted by your response(s) and supplementation addressing the requested information.

Sincerely,



Margaret Macdonald

Director

Office of Unfair Import Investigations

U.S. International Trade Commission

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